

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Noel E. Alcantara,)	
)	C/A No. 2:19-1546-MBS-BM
Plaintiff,)	
)	
vs.)	ORDER
)	
Allstate Crane Rental, Inc.,)	
)	
Defendant.)	
_____)	

Plaintiff Noel E. Alcantara, who is represented by counsel, filed this action on May 29, 2019, alleging that his former employer, Defendant Allstate Crane Rental, Inc., discriminated against him in violation of Title VII of the Civil Rights Act of 1969, 42 U.S.C. §§ 2000e, et seq. Plaintiff asserts causes of action for race discrimination (First Cause of Action), retaliation (Second Cause of Action), and hostile work environment (Third Cause of Action). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling.

On July 2, 2019, Defendant filed a motion to dismiss Plaintiff's Third Cause of Action. See Fed. R. Civ. P. 12(b)(6). Defendant contends that Plaintiff fails to allege facts sufficient to show harassment based on a protected class, and that Plaintiff's allegations fail to demonstrate severe and pervasive harassment. Defendant further contends that Plaintiff's allegations refer to an incident occurring in November 2014, which allegations now are time barred as outside the 300 day jurisdictional timeliness period. Plaintiff filed no response in opposition to the motion to dismiss.

On August 22, 2019, the Magistrate Judge issued a Report and Recommendation in which he recommended that Defendant's motion be granted. Plaintiff filed no objections to the Report and

Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. Defendant’s motion to dismiss Plaintiff’s Third Cause of Action (ECF No. 5) is **granted**. The cause is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

September 17, 2019